

IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MARTIN HOVENKOTTER,

Plaintiff,

vs.

SAFECO Corporation, SAFECO Insurance  
Company of America, and SAFECO Insurance  
Company of Illinois,

Defendants.

NO.

CLASS ACTION COMPLAINT FOR  
SPECIFIC PERFORMANCE OR  
DAMAGES, DECLARATORY AND  
INJUNCTIVE RELIEF RESULTING FROM  
BREACH OF CONTRACT AND  
VIOLATIONS OF THE CONSUMER  
PROTECTION ACT

AND

DEMAND FOR JURY TRIAL

COMES NOW the Plaintiff, MARTIN HOVENKOTTER, for himself individually and as the proposed Representative of a Class, and for his cause of action against the above-named Defendants, SAFECO Corporation, SAFECO Insurance Company of America, and SAFECO Insurance Company of Illinois (collectively, "SAFECO" or "Defendants"), alleges as follows:

**I. IDENTIFICATION OF THE PARTIES**

1.1 This action seeks specific performance or damages and declaratory and injunctive relief for Plaintiff and the Members of the Class, all of whom were and/or presently are insureds of SAFECO and who have been injured and suffered losses as a result of the misconduct of

CLASS ACTION COMPLAINT FOR SPECIFIC  
PERFORMANCE  
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1 SAFECO.

2 1.2 SAFECO advertised, solicited and sold first-party personal line automobile  
3 insurance policies in Washington and throughout the United States that contained coverage for  
4 underinsured and/or uninsured (hereinafter "UIM") property damages. This coverage, when  
5 purchased by a policyholder, obligated SAFECO to pay to the policyholder "damages which an  
6 insured is legally entitled to recover" from the owner or operator of an uninsured/underinsured  
7 motor vehicle.

8 1.3 Despite its knowledge that policyholders are entitled to recover all damages to  
9 which they are "legally entitled" and despite its knowledge that wrecked and repaired vehicles are  
10 often worth less after an accident than they were before an accident, SAFECO fails to honor its  
11 contracts to inspect damaged vehicles for diminished value loss, to inform policyholders of their  
12 coverage for diminished value loss and to pay policyholders for the "diminished value" that  
13 results from a vehicle having been wrecked.

14 1.4 As a result, Plaintiff, and others similarly situated, have not had their damaged  
15 vehicles appraised for diminished value loss, were not notified that diminished value was a  
16 covered loss and did not receive payment for damages due to "diminished value." They have  
17 therefore not received the policy benefits for which they paid.

18 1.5 SAFECO also routinely pays vehicle property damage claims properly paid under  
19 the UIM provisions of its policies under its collision and comprehensive provisions, thereby  
20 improperly charging its insureds a higher deductible.

21 1.6 Based on information and belief, such mischaracterization of coverage inures to the  
22 benefit of SAFECO and to the detriment of its policyholders by, *inter alia*, causing policyholders  
23 to incur additional charges for deductibles due under the collision and comprehensive coverages  
24 of SAFECO'S policies, adversely impacting policyholder ratings based on SAFECO'S rating  
25 structure, and limiting repairs and amount of loss for which SAFECO will pay to only those items  
26 SAFECO pays under collision and comprehensive coverages to first party insureds.

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## II. JURISDICTION

2.1 Original jurisdiction in this Court is proper pursuant to 28 U.S.C. § 1332(d)(2) (2005). Plaintiff alleges, upon information and belief, that less than one-third of all Class Members reside in the State of Washington and the cumulative amount in controversy for the Class exceeds \$5,000,000. This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. §1367 (2005).

2.2 Venue is proper pursuant to 28 U.S.C. §1391(b) and (c), and 18 U.S.C. §1965(a). Defendants transact business within Washington State and King County. Moreover, as described more fully throughout this Complaint, a substantial part of the acts and omissions giving rise to the claims alleged herein occurred or were undertaken by Defendants from within this district. Finally, Defendants transact business and may be found in this judicial district, and the interstate trade and commerce described herein is and has been carried out, at least in part, in this judicial district.

## III. THE PARTIES

3.1 Plaintiff MARTIN HOVENKOTTER ("Mr. HOVENKOTTER") is an adult presently residing in King County, Washington. Mr. HOVENKOTTER was insured under a policy issued by SAFECO that covered UIM losses. Mr. HOVENKOTTER is a member of the Class defined herein and seeks to be certified as class representative of this Class. Counsel is authorized to bring this matter on behalf of Mr. HOVENKOTTER.

3.2 Defendant SAFECO Corporation ("SAFECO-Corp") is the parent corporation of Defendants SAFECO Insurance Company of America, and SAFECO Insurance Company of Illinois, and is a Washington corporation.

3.3 Defendant SAFECO Insurance Company of America ("SAFECO-America") is a wholly owned subsidiary of SAFECO-Corp and is a Washington corporation.

3.4 Defendant SAFECO Insurance Company of Illinois ("SAFECO-Illinois") is a wholly owned subsidiary of SAFECO-Corp and is an Illinois corporation.

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3.5 "SAFECO" refers collectively to the named Defendants who issue automobile insurance policies throughout the nation. These companies operate under the umbrella of "SAFECO Property and Casualty Insurance Companies." SAFECO jointly employs personnel and each of the joint employees may work for multiple SAFECO companies. SAFECO-America and SAFECO-Illinois are parties to an Intercompany Reinsurance Agreement ("Agreement"). Pursuant to the Agreement, SAFECO-America agrees to accept and to reinsure all of the liabilities and expenses related to the insurance policies that the signatory SAFECO companies issue in consideration for the companies' promises to transfer to SAFECO-America all of the premiums and reserve amounts associated with the policies. The companies also agree to reinsure all of SAFECO-America's liabilities and expenses related to insurance policies issued by or on its behalf in exchange for SAFECO-America's agreement to transfer to each of the signator companies that company's respective share of SAFECO-America's premiums and reserves, including that company's share of the amounts reinsured by SAFECO-America under the Agreement. In addition, the signatory SAFECO companies authorize SAFECO-America to collect and to receive all premiums; to take charge of, adjust, and pay all losses with respect to all of their insurance policies; and to reinsure, administer or terminate all such policies as appropriate. The signatory SAFECO companies also agree to assign to SAFECO-America all of their company's rights and interests in their agents' balance and uncollected premiums as well as any other underwriting assets and related liabilities. In turn, SAFECO-America agrees to transfer and to assign to each company its respective allocation of such underwriting assets and liabilities. Because Defendants are juridically linked and form a single enterprise with responsibility for the acts complained of, they are jointly and collectively referred to as "SAFECO" herein.

#### IV. FACTS RELEVANT TO MR. HOVENKOTTER

4.1 On January 11, 2007, Mr. HOVENKOTTER'S 2006 Mazda Speed 6 AWD four door sedan driven approximately 11,000 miles was damaged in a collision with a hit and run motorist while it was legally parked, but unoccupied, in downtown Issaquah. The collision was

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1 caused solely by the negligence of the hit and run motorist. The estimate to repair the frame,  
2 body, paint and other damage to the vehicle was \$2,874.58.

3 4.2 At the time of the subject collision, Mr. HOVENKOTTER was insured with  
4 SAFECO and had purchased coverage for underinsured property damage. SAFECO, at its  
5 election, decided to pay to repair Mr. HOVENKOTTER'S Mazda Speed 6 AWD and did so under  
6 the collision and comprehensive provisions of Mr. HOVENKOTTER'S policy. SAFECO also  
7 charged Mr. HOVENKOTTER the \$500.00 collision and comprehensive deductible, which it  
8 offset against the repair costs, instead of the lower \$300.00 UIM deductible.

9 4.3 Mr. HOVENKOTTER complied with all of the terms of the policy before  
10 instituting this action.

11 4.4 Mr. HOVENKOTTER'S vehicle sustained a loss in value as a result of the above-  
12 described accident and repair decision. To date, SAFECO has not inspected Mr.  
13 HOVENKOTTER'S vehicle for diminished value loss, has not compensated Mr.  
14 HOVENKOTTER for the diminished value of his vehicle, or informed Mr. HOVENKOTTER  
15 about diminished value and his right to recover it. Nor has SAFECO informed Mr.  
16 HOVENKOTTER that he was entitled to have his claim adjusted under the UIM provisions of his  
17 policy, which has a lower deductible and a less detrimental impact on his policyholder rating.

## 18 **V. SAFECO'S MISCONDUCT**

19 5.1 SAFECO solicits consumers to purchase property damage insurance for their  
20 automobiles under UIM Property Damage Coverage. Under this coverage, SAFECO promises to  
21 cover any property damage, in excess of any applicable deductible (if one pertains), to the  
22 consumer's automobile which the insured is legally entitled to recover from the owner or driver of  
23 an underinsured (or uninsured) motor vehicle. SAFECO is obligated to appraise its insureds'  
24 damaged vehicles for diminished value loss, notify its insureds that diminished value is a covered  
25 loss and pay its insureds for any diminished value loss. Plaintiff and the Members of the Class all  
26 paid premiums to SAFECO with the reasonable expectation that SAFECO would make them

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1 whole under UIM Property Damage Coverage for damages they are legally entitled to collect from  
2 owners or drivers of underinsured and uninsured motor vehicles.

3 5.2 Despite its promise, when SAFECO estimates the cost to repair the damage to its  
4 insureds' automobiles and elects to repair rather than to replace the automobile, SAFECO  
5 estimates and pays only the cost of repair. In doing so, SAFECO places its own interests over that  
6 of its insureds, and fails to compensate its insureds for damages they are legally entitled to collect.

7 5.3 SAFECO was well aware of its contractual obligations throughout the Class  
8 period. Under the common law duty of good faith and fair dealing found in every state (codified  
9 in part in Washington Administrative Code § 284-30-350), and the states' Unfair Claims  
10 Settlement Practices Act (*e.g.*, Washington Administrative Code § 284-30-330), SAFECO must  
11 inform its insureds about covered losses and fairly and fully adjust claims. Yet, rather than fulfill  
12 its contractual and statutory duties, and thereby act in good faith, SAFECO has engaged in a  
13 course of conduct designed to conceal its obligations and to avoid paying its insureds for the  
14 diminished value suffered by their automobiles. SAFECO has thereby increased its profits at the  
15 expense of its insureds. Plaintiff and the members of the Class presented their claims for property  
16 damage to their insured automobiles in accordance with the terms of the contract. They requested  
17 that SAFECO fulfill its contractual obligations for which they had paid premiums. SAFECO is  
18 obligated to appraise its insureds' damaged vehicles for diminished value loss, notify its insureds  
19 that diminished value is a covered loss and pay its insureds everything they are owed upon  
20 presentment of their claim, and SAFECO failed to do so.

## 21 VI. CLASS ACTION ALLEGATIONS

22 6.1 This action is brought as a class action under FRCP 23(b)(2) and FRCP 23(b)(3).  
23 SAFECO'S conduct has been systematic and continuous and has affected large numbers of  
24 SAFECO policyholders over time. Plaintiff brings this class action to secure redress for  
25 SAFECO'S uniform and common practice of failing to appraise its UIM policyholders' damaged  
26 vehicles for diminished value loss, inform its policyholders of their diminished value loss and pay

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1 all damages their insureds are legally entitled to recover. SAFECO'S obligations and conduct  
2 have been uniform throughout the Class Period.

3 6.2. Plaintiff seeks certification of the following Rule 23(b)(2) Class:

4 All insureds of SAFECO who from and after February 18, 2003:

- 5 1. Were paid under the underinsured/uninsured motorist ("UIM") coverage  
6 provisions of their policy with SAFECO, or
- 7 2. Had underinsured/uninsured motorist property damage coverage and were  
8 involved in an accident with a hit-and-run motorist but received payment  
9 under SAFECO'S collision or comprehensive coverage, and
- 10 3. Who were not compensated for diminished value.

11 Excluded from the Class are those policyholders whose vehicles were declared total  
12 losses, employees of SAFECO, Plaintiff's counsel, and the assigned Judge and the Judge's family.

13 6.3 SAFECO has acted or refused to act on grounds generally applicable to  
14 the Class, thereby making appropriate an order declaring that SAFECO must specifically perform  
15 its contractual obligations by notifying Plaintiff and Class Members of their diminished value  
16 coverage, reassess Plaintiff's and Class Members' claims to identify any diminished value loss  
17 and provide Plaintiff and Class Members equitable compensation, including interest, for  
18 diminished value losses.

19 6.4 SAFECO has acted or refused to act on grounds generally applicable to  
20 the Class, thereby making appropriate an order declaring that SAFECO should reverse all  
21 consequences of paying Class Members' UIM and hit-and-run claims under its collision or  
22 comprehensive coverage and equitably compensate Class Members accordingly, including  
23 compensation for diminished value loss and payment of higher deductibles.

24 6.5 SAFECO has acted or refused to act on grounds generally applicable to  
25 the Class, thereby making appropriate injunctive relief on behalf of the entire Class to enjoin and  
26 prevent SAFECO from refusing to pay for diminished value on UIM property damage claims,  
27 failing to inform its insureds submitting UIM property damage claims of coverage for diminished

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1 value, failing to ascertain the amount of diminished value during the appraisal and repair process,  
2 and failing to pay hit-and-run, underinsured and uninsured motorist property damage claims under  
3 the UIM provisions of its policies.

4 6.6 Plaintiff alternatively seeks certification of the following Rule 23(b)(3) Class:

5 All SAFECO insureds who, from and after February 18, 2003:

- 6 1. Were paid under the underinsured/uninsured motorist ("UIM") coverage  
7 provisions of their policy with SAFECO, or
- 8 2. Had underinsured/uninsured motorist property damage coverage and were  
9 involved in an accident with a hit-and-run motorist, but received payment  
10 under SAFECO'S collision or comprehensive coverage, and
- 11 3. Who were not compensated for diminished value, where:
  - 12 (a) the estimate, including supplements, to repair the vehicle was more  
13 than \$1,000.00;
  - 14 (b) the vehicle suffered structural (frame) damage and/or required body  
or paint work; and
  - 15 (c) the vehicle was less than six years old (model year plus five) and  
16 had less than 90,000 miles on it at the time of the accident.

17 Excluded from the Class are those policyholders whose vehicles were declared total  
18 losses, employees of SAFECO, Plaintiff's counsel, and the assigned Judge and the Judge's family.

19 6.7 Membership in the Class is so numerous as to make it impractical to bring all Class  
20 Members before the Court. The exact number of Class Members is unknown, but can be  
21 determined from the records maintained by SAFECO. Plaintiff believes there are thousands of  
22 persons in the Class.

23 6.8 The named Plaintiff is a typical member of the class. He purchased an automobile  
24 policy with underinsured/uninsured motorist property damage coverage from SAFECO, paid his  
25 premiums, and made a claim for loss when his insured automobile was damaged by a hit-and-run  
26 motorist. Plaintiff submitted the insured automobile to SAFECO for inspection and payment of  
27 the damages he was legally entitled to recover. SAFECO inspected the vehicle and assessed the  
28 damages, yet failed to appraise the vehicle for diminished value loss or pay Plaintiff for the

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1 diminished value suffered. SAFECO also failed to disclose to Plaintiff his right to recover  
2 diminished value. SAFECO also adjusted the claim under the collision and comprehensive  
3 provisions of Plaintiff's policy instead of the UIM provisions, causing Plaintiff to incur a higher  
4 deductible and an adverse policyholder rating.

5 6.9 There are numerous and substantial questions of law and fact common to all of the  
6 members of the Class which predominate over any individual issues. Included within the common  
7 questions of law and fact are:

- 8 a. Whether Plaintiff and the Members of the Class had any obligations other than  
9 presenting their claim for property damage to SAFECO and making their vehicles  
10 available for inspection in order to receive compensation for diminished value;
- 11 b. Whether SAFECO failed to fulfill its contractual and claims handling obligations  
12 to its policyholders by not adjusting claims to include diminished value;
- 13 c. Whether SAFECO failed to fulfill its contractual and claims handling obligations  
14 to its policyholders by not disclosing the presence of loss due to diminished value;
- 15 d. Whether SAFECO breached its contracts with Plaintiff and Class Members by  
16 paying Plaintiff's and Class Members' UIM and hit-and-run claims under the  
17 collision or comprehensive provisions of its policies;
- 18 e. Whether SAFECO breached its contracts with Plaintiffs and Class Members by  
19 failing to pay diminished value; and
- 20 f. Whether the Plaintiff and the members of the Class have sustained damages and  
21 the proper measure of those damages.

22 6.10 Plaintiff has no interest adverse to the interests of other Members of the Class and  
23 will fairly and adequately protect the interests of the Class. Plaintiff has retained counsel  
24 experienced and competent in the prosecution of class actions and complex litigation.

25 6.11 A class action is superior to other available methods for the fair and efficient  
26 adjudication of this controversy. Absent a class action, due to the refusal of SAFECO to inform

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its insureds about diminished value or to fully adjust their claims for diminished value and to compensate its insureds for their diminished value loss, the Class Members will continue to suffer damage and SAFECO'S conduct will proceed without effective remedy.

6.12 Members of the Class have little interest in or ability to prosecute an individual action due to the complexity of the issues involved in this litigation and the relatively small damages suffered by each member of the Class.

6.13 This action will allow an orderly and expeditious administration of Class claims, economies of time, effort and expense will be fostered, and uniformity of decisions will be ensured.

6.14 This action should present no difficulty that would impede its management by the Court as a class action, which is the best available means by which Plaintiff and the members of the Class can seek redress for the harms caused to them by SAFECO.

## VII. CAUSES OF ACTION

### COUNT I - BREACH OF CONTRACT

7.1. Plaintiff realleges the allegations contained in previous paragraphs as if fully set forth herein.

7.2 Plaintiff and the members of the Class entered into contracts with SAFECO, and paid consideration in the form of premiums for UIM property damage coverage. Plaintiff and the members of the Class have complied with all conditions precedent for recovery under SAFECO'S policies, by presenting their claims and making their damaged vehicles available to SAFECO for inspection. For Plaintiff and each Member of the Class, by making payment on the underlying claim, SAFECO has found coverage to exist and all conditions precedent to be satisfied. SAFECO therefore has found Plaintiff and the members of the Class to be legally entitled to recover damages from SAFECO that they could recover from the owner and/or driver of the uninsured or underinsured motor vehicle. These damages include the loss in value of the vehicle due to the accident. Plaintiff and the members of the Class are intended beneficiaries of the

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1 agreements between SAFECO.

2 7.3 SAFECO'S standard form UIM policies involved a promise to pay for all damages  
3 the insured is legally entitled to recover from the owner of the uninsured or underinsured motor  
4 vehicle.

5 7.4 Diminished value is a covered loss and not excluded from those items of damages  
6 for which payment is due from SAFECO.

7 7.5 SAFECO breached the express provisions of its contracts with Plaintiff and the  
8 members of the Class by failing to disclose the right to recover diminished value, by failing to  
9 assess their diminished loss, and by not compensating them for their diminished value loss.

10 7.6 SAFECO also breached the express provisions of its contracts with Plaintiff and  
11 certain members of the Class by paying their UIM and hit-and-run claims under its collision or  
12 comprehensive coverage.

13 7.7 As a direct and foreseeable consequence of the foregoing, Plaintiff and the  
14 members of the Class were damaged by receiving less than they had contracted for, in an amount  
15 to be determined at trial or, alternatively, through SAFECO'S reassessment of their claims for  
16 diminished value.

17 **COUNT II - VIOLATIONS OF CONSUMER PROTECTION ACT**

18 7.8 Plaintiff realleges the allegations contained in previous paragraphs as if fully set  
19 forth herein.

20 7.9 SAFECO owes a common law and statutorily imposed duty of good faith and fair  
21 dealing to its insureds in handling their claims.

22 7.10 SAFECO has violated this duty of good faith and fair dealing by:

23 a. Failing to pay claims for diminished value loss without a reasonable  
24 justification or investigation and based solely on speculation and  
25 conjecture;

26 b. Wrongly claiming that diminished value is excluded from coverage when

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no such express exclusion exists;

c. Failing to adopt and implement reasonable standards for the prompt investigation of diminished value claims;

d. Failing to disclose facts related to diminished value coverage;

e. Failing to make good faith investigation and payment of claims before invoking any contractual rights to arbitration or appraisal; and

f. Mischaracterizing hit-and-run claims as collision or comprehensive claims.

7.11 SAFECO'S above acts are unlawful and a *per se* violation of statutory and common law duties, *e.g.*, RCW § 48.30.040, RCW § 48.30.090, and Washington Administrative Code §§ 284-30-330 and 284-30-350.

7.12 At all relevant times, SAFECO was engaged in trade or commerce. Its conduct as described herein affects the public interest within the meaning of the Washington Consumer Protection Act, RCW § 19.86 and constitutes unfair and deceptive acts and practices.

7.13 SAFECO'S actions and omissions were intended by SAFECO to induce Plaintiff and the Class Members to enter into, maintain and/or renew policy contracts with SAFECO which they otherwise would not have entered into had the information been disclosed, and to prevent them from pursuing compensation for their diminished value loss. These acts constituted unfair and/or deceptive acts and/or practices.

7.14 SAFECO'S unlawful acts have been a proximate cause of damage to Plaintiff and Class Members in an amount to be proven at trial or, alternatively, through SAFECO'S reassessment of their claims for diminished value.

7.15 Plaintiff has been compelled to engage the services of attorneys whose names are subscribed to the pleading for the prosecution and collection of his claim. Therefore, Plaintiff is entitled to recover from SAFECO the additional sum of twelve percent (12%) per year on the amount payable under the policy, together with a reasonable sum for the necessary services of Plaintiff's attorneys in preparation and trial of this action, pursuant to RCW § 19.86.090,

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including any appeals to the courts of appeal and the Supreme Court of Washington.

### COUNT III - DECLARATORY RELIEF

7.16 Plaintiff realleges the allegations contained in previous paragraphs as if fully set forth herein.

7.17 Notwithstanding the UIM property damage provisions of SAFECO'S automobile insurance policies which require SAFECO pay its insureds for diminished value, SAFECO fails and refuses to pay diminished value for UIM property damage claims, to inform or notify its insureds of coverage for diminished value, and to assess the amount of diminished value during the appraisal and repair process.

7.18 Notwithstanding the UIM property damage provisions of its automobile insurance policies which require SAFECO to compensate its insureds for losses they are legally entitled to recover from hit-and-run, underinsured and uninsured motorists, SAFECO contends that it may properly pay and often pays such claims under the more limited collision or comprehensive coverage provisions of its policies, often causing its insureds to incur a higher deductible.

7.19 Plaintiff contends that, pursuant to the SAFECO'S insurance policy, insureds are legally entitled to have SAFECO pay them for their diminished value losses, notify them of their coverage for diminished value and assess the amount of diminished value during the appraisal and repair process.

7.20 Plaintiff contends that, by failing to notify insureds of their diminished value coverage, assess insureds' diminished value loss or compensate insureds for their diminished value loss, SAFECO fails to provide Plaintiff and Class Members all the benefits of the insurance policies they purchased from SAFECO.

7.21 Plaintiff contends that, pursuant to SAFECO'S UIM policy, insureds submitting hit-and-run claims are legally entitled to have SAFECO notify them of their coverage for diminished value, assess the amount of diminished value during the appraisal and repair process, and pay them for their diminished value losses under the UIM provisions of their

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1 policies.

2       7.22 Plaintiff contends that by paying insureds submitting hit-and-run claims under the  
3 collision or comprehensive provisions of its policies, SAFECO fails to provide these insureds all  
4 the benefits of the insurance policies they purchased from SAFECO and improperly charges them  
5 higher deductibles and/or downgrades their policyholder rating.

6       7.23 Because SAFECO continues to mischaracterize hit-and-run claims as  
7 collision or comprehensive losses and under-compensate insureds by not paying them for all  
8 damages to which they are legally entitled, including diminished value losses, an actual dispute  
9 exists between Plaintiff and SAFECO, which parties have genuine and opposing interests, which  
10 interests are direct and substantial, and of which a judicial determination will be final and  
11 conclusive.

12       7.24 Plaintiff, on behalf of himself and Class Members, seeks a judgment declaring that  
13 SAFECO must specifically perform its contractual obligations by notifying Plaintiff and Class  
14 Members of their diminished value losses, reassessing Plaintiff's and Class Members' claims for  
15 diminished value loss, equitably compensating Plaintiff and Class Members for any diminished  
16 value loss, and reversing all consequences of having paid Plaintiff's and Class Members' hit-and-  
17 run claims under its collision or comprehensive coverage, including equitably compensating  
18 Plaintiff and Class Members who paid higher deductibles.

19       7.25 Alternatively, Plaintiff, on behalf of himself and Class Members, seeks a judgment  
20 declaring that SAFECO is obligated under its UIM property damage policy provisions to pay  
21 insureds for the diminished value of vehicles involved in accidents; that SAFECO is obligated  
22 under its UIM property damage policy provisions to inform Plaintiffs that diminished value is a  
23 covered loss under the policy; that SAFECO is obligated under its UIM property damage policy  
24 provisions to assess the amount of diminished value losses during the appraisal and repair  
25 process; and that SAFECO is obligated to adjust and pay hit-and-run claims under the UIM  
26 provisions of its policy.

27 CLASS ACTION COMPLAINT FOR SPECIFIC  
28 PERFORMANCE  
OR DAMAGES/INJUNCTIVE RELIEF/DAMAGES - 14

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**COUNT IV - INJUNCTIVE RELIEF**

7.26 Plaintiff realleges the allegations contained in previous paragraphs as if fully set forth herein.

7.27 SAFECO continues to not compensate its insureds for the diminished value they are “legally entitled to recover” from the owner or operator of an uninsured/underinsured motor vehicle.

7.28 SAFECO continues to not inform its insureds that diminished value losses are covered under its UIM policy.

7.29 SAFECO continues to not assess diminished value losses during the appraisal and repair process on UIM claims.

7.30 SAFECO continues to mischaracterize UIM claims as collision or comprehensive claims.

7.31 Unless this court acts as requested herein, SAFECO will continue to fail to inform its insureds of coverage under its UIM policies for diminished value losses, will fail to adjust UIM claims for diminished value losses, will fail to pay for diminished value losses on claims made against UIM policies, and will continue to mischaracterize UIM claims as collision or comprehensive claims.

7.32 Plaintiff and Class Members have been injured and harmed by SAFECO’S refusal to disclose, ascertain and pay diminished value. They have also been harmed by SAFECO’S mischaracterization of the UIM claims as collision or comprehensive claims.

7.33 Plaintiff has no adequate remedy at law for these acts and omissions of SAFECO.

7.34 Accordingly, Plaintiff asks the Court to issue preliminary and permanent injunctions that require SAFECO to disclose, ascertain, and pay diminished value losses and to adjust and pay hit-and-run claims under the UIM provisions of its policies.

CLASS ACTION COMPLAINT FOR SPECIFIC  
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**VIII. DEMAND FOR JURY**

8.1 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a jury trial in the above-entitled action.

**IX. PRAYER FOR RELIEF**

9.1 Plaintiff and the members of the Class have been injured as a result of SAFECO'S conduct as described above by failing to obtain the benefit of their bargain, among other ways, and will continue to suffer unless and until the Court acts to enjoin SAFECO and to construe the UIM policy. Accordingly, Plaintiff and the members of the Class pray for the following relief:


1. For an order certifying the above-entitled case as a class action, certifying Plaintiff as Class representative and appointing Plaintiff's counsel as counsel for the Class;
2. For an order declaring SAFECO must specifically perform its contractual obligations, including equitably compensating Plaintiff and Class Members for their diminished value losses. Alternatively, awarding Plaintiff and Class Members damages for their uncompensated diminished value losses;
3. For a judgment for costs of suit and attorneys' fees;
4. Post-judgment interest on the judgment at the rate provided by law from the date of judgment until paid;
5. Treble damages per RCW 19.86 *et seq.*;
6. A declaratory judgment as requested herein;
7. Injunctive relief as requested herein;

1 8. Representative incentive fees; and

2 9. Such other relief as may be just and equitable.

3 DATED this 18<sup>TH</sup> day of February, 2009.

4 LOWENBERG, LOPEZ & HANSEN, P.S.

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27 CLASS ACTION COMPLAINT FOR SPECIFIC  
28 PERFORMANCE  
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CLASS ACTION COMPLAINT FOR SPECIFIC  
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